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Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

May 23, 2001

AO-01-09

Mark Molloy
Brandon Associates, LLC
Ten Liberty Square
Boston, MA 02109

Re: Political Contributions by Non-Profit Corporation

Dear Mr. Molloy:

This letter is in response to your May 1, 2001 request for an opinion regarding the extent that the Technology Education Association of Massachusetts ("TEAM"), a nonprofit corporation, may contribute funds to political candidates.

TEAM, a non-profit corporation with an annual gross revenue of less than \$25,000, is comprised of approximately 400 members who are public school teachers specializing in technology education. You have indicated that members pay yearly dues to belong to this organization. In return, TEAM conducts educational conferences and membership support efforts, and voices membership's concerns on a state and local level.

In the past, TEAM members have made individual political contributions to candidates for legislative and statewide office who support technology education. Recently, TEAM has become interested in making political contributions as an association. Accordingly, you have asked the following questions:

QUESTION 1

In what manner may TEAM contribute to legislative and constitutional candidates under the campaign finance law?

RESPONSE 1

As a non-profit corporation whose general treasury does not contain funds derived from business or professional corporations, TEAM may make political contributions to any legislative or constitutional candidate.¹ See AO-91-31. As long as it does not solicit or receive funds for political purposes, TEAM may make such contributions without being subject to the contribution limits or the reporting requirements of the campaign finance law until its political contributions become "more than incidental" when compared to its gross revenues.

TEAM's political contributions would become "more than incidental" if such contributions, combined with any other political expenditures, (1) were for the purpose of aiding, promoting or preventing the nomination or election of any person to public office, or aiding or promoting or antagonizing the interest of any political action committee or political party and (2) exceeded, in the aggregate, in a calendar year, either \$15,000 or 10% of TEAM's gross revenues for the previous calendar year, whichever is less.

If TEAM does not reach the incidental threshold for political expenditures in a calendar year, it need only report any "independent expenditures" exceeding \$100. An "independent expenditure" is an expenditure that advocates the election or defeat of a clearly identified candidate or candidates made without cooperation or consultation with the candidate or his or her committee. These expenditures must be reported to OCPF on Form CPF 18A within seven days of the expenditure. See M.G.L. c. 55, § 18A.

If TEAM reaches the incidental threshold for political expenditures in a calendar year, TEAM would become subject to the contribution limits and reporting requirements which apply to political action committees. The annual contribution limits applicable to TEAM if it reaches the incidental threshold are set forth in the third paragraph M.G.L. c. 55, § 6.² The relevant reporting requirements are set forth in clause (e) of M.G.L. c. 55, § 18.³ TEAM would become subject to these provisions as soon as it exceeds the incidental threshold and for each year thereafter until one year after the incidental threshold is not met.

Finally, TEAM should be mindful of the record keeping requirements imposed by the campaign finance law. Detailed records of TEAM's political contributions and expenditures should be kept for six years following the date of the relevant election.

A more comprehensive discussion of the campaign finance law as it applies to TEAM can be found in OCPF's Interpretive Bulletin IB-88-01, *"The Applicability of the Campaign Finance Law to Organizations Other Than Political Committees."* I have enclosed a copy of this publication for your convenience.

¹ It should be noted, however, that pursuant to the Massachusetts Clean Election Law, M.G.L. c. 55A, candidates who wish to receive public financing for their campaigns may only accept political contributions from individuals and political committees. Therefore, TEAM risks having its contributions returned by candidates who are Clean Election participants unless TEAM forms a political action committee and raises money for their political purposes.

² These limits are \$500 per candidate or PAC and an aggregate of \$5000 to party committees of the same party.

³ § 18 states that reports should be filed: (1) on or before the eighth day preceding a primary; (2) the eighth day preceding a biennial state election, and (3) the twentieth day of January in the following year complete as to the thirty-first day of December of the prior year. If the threshold is reached, TEAM must list all political expenditures on Form CPF 111, including expenditures made prior to reaching the incidental threshold. This initial report, and those required subsequently, should be filed with OCPF in accordance with § 18.

QUESTION 2

Does TEAM have to organize a political action committee if it does not intend to spend more than 10% of its previous year's gross annual revenue or contribute a combined \$15,000 to candidates?

RESPONSE 2

No. TEAM must form a political action committee only if it **solicits or receives any money or other things of value for political purposes**.

An organization which solicits or receives any money or other thing of value for political purposes is deemed to be functioning as a political committee and is subject to the provisions of the campaign finance law as of the date of the solicitation or receipt of such money or other things. This would include any funds solicited or received by TEAM from TEAM members or others specifically for political purposes. As a result, TEAM may not solicit or receive funds to be used for political purposes unless it first organizes with OCPF as a political action committee. See AO-97-21.

QUESTION 3

You have asked how TEAM should go about contributing to candidates for legislative or constitutional offices, including whether TEAM may reimburse members who contribute to a candidate on TEAM's behalf.

RESPONSE 3

As set forth above, TEAM may make political contributions to candidates for legislative and constitutional office. TEAM contributions to any one candidate which exceed \$50 in the course of a calendar year must be by "written instrument," which is defined as "a check on which the contributor is directly liable or which is written on a personal, escrow, trust, partnership, business or other account which represents or contains the contributor's funds ... [or] for contributions by credit card, a paper record signed by the cardholder or, in the case of such contribution made over the Internet, an electronic record created and transmitted by the cardholder." See M.G.L. c. 55, § 9.

Pursuant to M.G.L. c. 55, § 10, TEAM must disclose the names and addresses of its principal officers to the recipient of the contribution at the time the contribution is made. The recipient candidates and committees, in turn, must disclose contributions received from TEAM.

Section 10 of the campaign finance law also prohibits individuals from, "directly or indirectly, making a campaign contribution in any name except his own." As the result, TEAM may not contribute to candidates through its members who are then reimbursed by TEAM.

Please note that this opinion is issued on the basis of your letter and solely within the context of the campaign finance law. I encourage you to contact us in the future if you have further questions regarding any aspect of the campaign finance law.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan
Director

MJS:bp
Enclosure (IB-88-01)